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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,837	02/13/2001	Thomas Birkholzer	259/280	2743

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EXAMINER

SAADAT, CAMERON

ART UNIT PAPER NUMBER

3713

DATE MAILED: 09/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p>09/762,837</p>	<p>Applicant(s)</p> <p>BIRKHOLZER ET AL.</p>	
	<p>Examiner</p> <p>Cameron Saadat</p>	<p>Art Unit</p> <p>3713</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2-13-01.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____                                    |

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### DETAILED ACTION

In response to preliminary amendments filed on February 13, 2001, claims 1-12 have been canceled and the newly added claims 13-27 are pending in this application.

#### *Specification*

1. It appears that the instant application is a direct translation of the claimed priority German document. A substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter. In addition, the title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed, and the title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words. Further, the Abstract of the Disclosure is missing. Correction is required.

2. The disclosure is objected to because of the following informalities:

a. The specification lacks the appropriate headings such as Background of the Invention, Brief Summary of the Invention, Brief Description of the Drawings, and Detailed Description of the Invention. See MPEP § 608.01(c), (d), (f), (g). Appropriate correction is required.

b. The term "practising" on page 1, line 10 should be recited as - - practicing - - to correct the spelling error. Appropriate revision is recommended as this term is misspelled throughout the specification.

c. The phrase "The to insert" on page 3 line 35 – page 4, line 1 is unclear appears to be a typographical error. Appropriate correction is required.

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***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 19-20, 22-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Referring to claim 23, The phrase “stylized person or an equivalent thereof” is unclear and indefinite.
6. Referring to claims 19-20, 22-23, use of the term “and/or” renders the claim indefinite, failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Claim 24 is rejected for incorporating the above errors from its respective parent claims by dependency.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claims 13-24, and 27 are rejected under 35 U.S.C. 102(a) as being anticipated by Burns (U.S. Patent No. 5,904,484).
10. Referring to claim 13, Burns discloses a system for self-monitoring by a moving person of body movements, comprising: a video camera configured to generate a recorded video image

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or image sequence; a monitor operatively coupled to the video camera for outputting the recorded video image or image sequence; an insertion component configured to insert at least one moving marker, indicating a predetermined movement or body position, into the video image or image sequence (see claim 1),

wherein the insertion component is configured to detect characteristic points, lines, contours, or equivalent characteristics of the moving person or of a displayed area of the moving person (see claim 2),

wherein the insertion component is configured to automatically adapt the movement speed of the moving marker to the movement speed of the moving person or of a displayed area of the moving person (see claim 18).

11. Referring to claim 14, Burns discloses a system wherein the insertion component is configured for inserting at least one stationary marker that is stationary during the body movement and indicates a predetermined, ideal body movement (see claim 13).

12. Referring to claim 15, Burns discloses a system wherein the insertion component is configured for inserting at least one stationary marker suitable for adjustment of the person with respect to the video camera (see claim 16).

13. Referring to claim 16, Burns discloses a system wherein the insertion component is configured: to detect characteristic points, lines, contours, or equivalent characteristics of the person shown in the recorded video image, or of the displayed area of the person, while the person is not moving; to automatically adapt the marker in a manner dependent on a detection result (column 7, line 36 – column 8, line 4).

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14. Referring to claim 17, Burns discloses a system wherein the insertion component is configured to automatically adapt a size and/or insertion position of the marker in a manner dependent on the detection result (column 7, line 36 – column 8, line 4).

15. Referring to claim 18, Burns discloses a system wherein the insertion component is configured: to detect characteristic points, lines, contours, or equivalent characteristics of the person shown in the recorded video image or image sequence, or of the displayed area of the person, while the person is performing a movement sequence and is shown in the recorded video image sequence; to automatically adapt the marker in a manner dependent on a detection result (column 7, line 36 – column 8, line 4).

16. Referring to claim 19, Burns discloses a system wherein the insertion component is configured to automatically adapt a size and/or insertion position of the marker in a manner dependent on the detection result (column 7, line 36 – column 8, line 4).

17. Referring to claim 20, Burns discloses a system wherein the system is further configured for manually varying size/or insertion position and/or movement speed of the marker (column 7, lines 59-63; claim 14).

18. Referring to claim 21, Burns discloses a system comprising a storage component operatively coupled to the insertion component, wherein for a plurality of different predetermined body movement sequences, insertion data is stored for at least one marker, and the person may select from among the stored insertion data (see claim 23).

19. Referring to claim 22, Burns discloses a system wherein the moving marker comprises point 78 and line 74 (see Fig. 4b).

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20. Referring to claim 23, Burns discloses a system wherein a point and a line form a stylized person (see Fig. 2a, ref. 12).

21. Referring to claim 24, Burns discloses a system wherein the system is configured for allowing the user to select from among different display forms (see claim 17).

22. Referring to claim 27, Burns discloses a system wherein the insertion component 210 comprises a separate component within a communications channel between video camera 230 and monitor 250 (see Fig. 7).

***Claim Rejections - 35 USC § 103***

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

25. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns (U.S. Patent No. 5,904,484). Burns discloses a system wherein the insertion component 210 comprises a separate component within a communications channel between video camera 230 and monitor 250 (see Fig. 7). Burns does not explicitly teach that the insertion component may

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be integrated in the monitor (as per claim 26) or the video camera (as per claim 25). However, it is the examiner's position that integrating the insertion component in the monitor or the video camera is an arbitrary, obvious design choice that does not change the function of the insertion component. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the insertion component described by Burns, integrating it in the monitor or video camera, thereby minimizing the number of components and wires in the system.

### *Conclusion*

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- O'Leary et al. (U.S. Patent No. 5,249,967) – Sports Technique Video Training Device.
- Brostedt et al. (U.S. Patent No. 5,984,684) – Method and System for Teaching Physical Skills.
- Mann (U.S. Patent No. 4,891,748) – Sports Technique Video Training Device.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is 703-305-5490. The examiner can normally be reached on M-F 8:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 703-308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.



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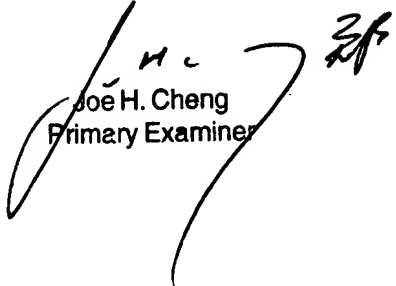
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

CS

September 3, 2002

  
Joe H. Cheng  
Primary Examiner